

## Chapter 3

### Basic concepts-415(b) and 417(e)

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INTERNAL REVENUE SERVICE  
TAX EXEMPT AND GOVERNMENT ENTITIES

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## Overview

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**Introduction** This chapter will describe the basic concepts of 415(b) and 417(e), and will describe the plan requirements with respect to these sections.

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## Background—effective date

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**GATT effective date** GATT changed the assumptions that plans are to use with respect to Sections 415(b) and 417(e). **These changes must be specified by the plan.**

For section 415 purposes, the effective date of the plan amendments must be January 1, 1995 (assuming the plan has a calendar year limitation year; otherwise it is the first limitation year beginning after 12/31/94). This effective date applies regardless of when the plan is amended to reflect the changes made to section 417(e)(3) by GATT. The plan sponsor has the option of delaying the changes for 417(e)(3) between 1995 and the end of 1999.

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## Background—effective date, Continued

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**SBJPA  
modified the  
GATT effective  
date**

SBJPA, which was enacted 8/20/96, modified the GATT changes as applied to 415(b).

If the plan was in existence at the time that GATT was enacted (12-7-94), such a plan had a choice as to when to implement the assumptions (as amended by SBJPA, GATT). For plans in existence on 12-7-94, the plan can delay the changes to the **earlier of**:

- Later of adoption or effective date of the amendment, or
- In all cases, the limitation year beginning after 12/31/99 (the 2000 limitation year).

Thus, the plan can be amended for the GATT assumptions prior to the 2000 limitation year. However, the GATT assumptions **must apply** by the first day of the 2000 limitation year.

If a plan had been amended for GATT prior to SBJPA enactment, the employer could repeal the amendment due to SBJPA changes. The employer had to do so within 1 year starting from the enactment of SBJPA (although some distributions might have to be recalculated). Note, Rev. Proc. 97-41 extended this one-year period to the end of the remedial amendment period for GATT.

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## 415(b) dollar limitation and adjustments to that limitation

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**Adjustment to 415(b) dollar limit**

Section 415(b) provides a percentage of compensation limit and a dollar limitation to test a participant's straight life annuity on an annual basis for DB plans.

The 415(b) dollar limitation has to be adjusted if the participant's annuity starting date is not the participant's social security retirement age.

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**415(b) adjustment if annuity starting date begins before SSRA but after 62**

If the annuity starting date commences before the participant's social security retirement age, there are two adjustments. The first adjustment to the dollar limitation is a straight percentage for a number of months in accordance with section 216(l) of the Social Security Act and Notice 87-21. Note that this is a reduction that only applies from Social Security Retirement Age ("SSRA") down to age 62.

The adjustment is as follows:

- 5/9 of 1% for the first 36 months
- 5/12 of 1% for the next 24 months if the social security age is greater than 65.

For limitation years ending after 12/31/2001 the limit will no longer be adjusted from SSRA, but will be reduced below age 62 using 5% and the applicable mortality table or the plan's assumptions, whichever produces the smaller dollar limit. Above age 65 the limit is increased using 5% and the applicable mortality table or the plan's assumptions, whichever produces the smaller dollar increase. (EGTRRA P.L. 107-16, Sec. 611)

The next adjustment to the dollar limit is for annuity starting dates commencing before the participant turns age 62. [The actuarial adjustment is based on 5% and the applicable mortality table or the plan's assumptions, whichever produces the smaller dollar limit.] The adjustments to the 415(b) dollar limit are based on the age of the participant at the time that the annuity starting date commences. Thus, if a participant is 61 at the time the participant's annuity starting date commences, the 415(b) dollar limitation must be adjusted from the social security retirement to age 61.

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**415(b) dollar limitation and adjustments to that limitation,**

Continued

**Example illustrating adjustment to age 62**

Assume that the participant's social security retirement age is 66, and the participant wants a distribution in 1999 at age 62.

The 1999 dollar amount is \$130,000. The adjustment is as follows:

For the first 3 years, the adjustment is 20%, which is adjustment down for the first 36 months. The remaining year gets an adjustment of 5% (5/12 of 1% for 12 months). So the 415(b) dollar limit is  $130,000 \times .75$  or \$97,500 at age 62.

**GATT and SBJPA changed the assumptions**

GATT and SBJPA changed the assumptions with respect to section 415(b) for the actuarial adjustment for annuity starting dates commencing before the participant turns age 62.

GATT/SBJPA requires plans to use the mortality table specified in Rev. Rul. 95-6 (replaced by 2001-62 effective after 12/31/02), which is the 83 GAM blended 50% male and 50% female ("the applicable mortality table").

**Assumptions if plan was in existence on 12/7/94 and chose not to use assumptions**

For plans in existence *on* 12/7/94 that did not elect to use the GATT assumptions, the pre-GATT 415(b) assumptions that the plan can use to reduce the dollar limit for commencement of benefits paid prior to age 62 are

- 1) an interest rate of no less than the greater of 5% or the rate and
- 2) the mortality table specified in the plan (as long as that mortality table is reasonable). (Note a plan could specify an interest rate greater than 5%, in this case, the 415(b) limit would be lower dollar limit.)

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**415(b) dollar limitation and adjustments to that limitation,**

Continued

**For plans initially effective after 12/7/94**

For DB plans initially effective after 12-7-94, if the annuity starting date for a participant commences before age 62, the 415(b) dollar limit is actuarially adjusted using the GATT assumptions.

Thus, for limitation years on or after January 1, 1995, the adjusted 415(b) dollar limit is **the lesser of the age adjusted limits** calculated using:

- the plan's interest and the plan's mortality table, or
- 5% and the "applicable mortality table"

If plan uses the "applicable mortality table", the plan might simply provide that the limit at an age before age 62 is the age 62 limit reduced **using an interest rate that is the greater of** five percent or the rate specified *by* the plan. Using the greater of the two interest rates results in a **limit that is the lower** of the two calculations.

**The 415(b) dollar limit adjusted actuarially for annuity starting date after SSRA.**

This same procedure is used for distributions after SSRA. The plan would use the sets of actuarial assumptions to increase the DB to an amount at the later age that is actuarially equivalent to the defined benefit limit.

Therefore, for limitation years beginning on or after January 1, 1995, the adjusted 415(b) dollar limit is the lesser of the age adjusted limits calculated using:

- the plan's stated interest and the plan's mortality table, or
- 5% and the "applicable mortality table"

Remember that the benefit payable must not exceed 100% of the participant's high three-year average compensation

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**415(b) dollar limitation and adjustments to that limitation,**

Continued

**If the plan uses a different set of assumptions to calculate the IRC415(b) limit**

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With GATT, for the first time, Congress required plans to use a specific interest rate and mortality table as the standard for calculating the 415(b) dollar limit for annuity starting dates that commence earlier than age 62. As a result, two calculations are necessary if the plan uses a different interest rate and different mortality table than those required by GATT *to calculate the 415(b) dollar limit*. The lesser dollar limit at the age of distribution would be used as required under Q&A 7 and Q&A 8 of Rev. Rul. 98-1. You may note that for Pre-GATT assumptions, there is no requirement to do two calculations if the plan uses different assumptions.

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## Optional forms of benefits under GATT

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### Introduction

A DB plan generally provides for a normal form of benefit. Any other form distributed to a participant is considered to be an optional form of benefit.

Optional forms of benefits can be those forms of benefits that are based upon the life of a participant. For example, a married participant elects a single life annuity. Such a life annuity would be an optional form of benefit. Benefits that are based on a participant's life are not subject to Section 417(e)(3). All other benefits, such as a single sum distribution, are subject to the 417(e)(3) requirements.

An optional form of benefit can also be the normal form of benefit paid earlier than normal retirement age. For example, a qualified joint and survivor annuity payable at age 62. Even though the benefit is paid as a qualified joint and survivor annuity, the benefit is an optional form because the annuity starting date is prior to the participant reaching normal retirement age.

All optional forms of benefits must be the actuarial equivalent of the normal form of benefit distributed at normal retirement age. For purposes of testing the benefit under the 415(b) limits, the optional form of benefit must be converted to the actuarial equivalent of a straight life annuity at benefit commencement age. If the plan does not offer any optional forms of benefit, then there will be no "form adjustment(s)" under 415(b).

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## Optional forms of benefits under GATT, Continued

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**Benefits  
subject to  
Section  
417(e)(3)**

Benefits subject to section 417(e)(3) include all forms of benefits except benefits payable in the form of an annual benefit for life that **does not decrease** during the life of the participant (or in the case of a QPSA, the life of the participant's spouse). Therefore, whenever an optional form of benefit is offered by the plan, the benefit must be adjusted under Section 417(e)(3) if the benefit is not based on the life of an individual, such as:

- Lump sum,
  - Decreasing annuities, or
  - Term certain.
- 

**Introduction to  
417(e)(3)  
requirements**

When determining the present value of a lump sum or other non-life benefit, two assumptions must be used. The plan must apply:

- An interest rate, and
  - A mortality table.
- 

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**Optional forms of benefits under GATT, Continued**

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**Pre-GATT  
417(e)(3)  
assumptions**

The 417(e)(3) assumptions prior to GATT are:

- The required interest rate is the PBGC rate (used for determining the present value of lump sum distributions on plan termination), and
- The plan can choose any reasonable mortality table.

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**Post-GATT  
417(e)(3)  
assumptions**

The post - GATT assumptions for 417(e)(3) are:

- The plan must use the "applicable interest rate", which is a 30 year Treasury Security Rate, and
- The plan must use the "applicable mortality table", which is the 83 GAM table (blended 50% male, 50% female) as found in Rev. Rul. 95-6.
- For Annuity Starting Dates beginning on or after 12-31-2002, the "Applicable Mortality Table" is the 1994 GAR Table projected to 2002, blended 50% unloaded male and 50% unloaded female mortality rates. See Revenue Ruling 2001-62.

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## Optional forms of benefits under GATT, Continued

### Interaction between 417(e)(3) and 415(b)

Where a participant's benefit is payable in a form other than a straight life annuity, section 415(b)(2)(B) provides that the benefit is adjusted to an equivalent annual benefit in the form of a straight life annuity commencing at the same age.

**If the benefit is subject to 417(e)(3)**, then the equivalent annual benefit is the greater of the equivalent annual straight life annuity benefit computed using:

- The "applicable interest rate" and the "applicable mortality table", or
- The plan interest rate and mortality table (used to determine actuarial equivalence under the plan for the form of benefit being paid).

**If the benefit is not subject to 417(e)(3)**, then the equivalent annual benefit is the greater of the equivalent annual straight life annuity benefit computed using:

- 5% and the "applicable mortality table", or
- the plan interest rate and the "applicable mortality table"

### Determining the applicable interest rate-introduction

To determine the "applicable interest rate", refer to the 30-year Treasury Security rate. Since this rate is a fluctuating rate, there is a particular method to lock in the rate to calculate the lump sum equivalent during a period, such as a plan year. Although the 30-year Treasuries are no longer being issued, the IRS is still publishing the 30-year Treasury Security rates monthly.

The method to determine this rate is based on several definitions as defined in Treas. Reg. Section 1.417(e)-1(d)(4), such as lookback month and stability period.

### Definition of lookback month

**Lookback month**— the month a plan looks to in determining the interest rate (which remains constant during the stability period). This month can be the first, second, third, fourth or fifth calendar month (or a combination for an average - see exception under 1.417(e)-1(d)(4)(iv)) immediately preceding the stability period.

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## Optional forms of benefits under GATT, Continued

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**Definition of  
stability period**

**Stability period**— the period over which the interest rate for the lookback month is used to calculate each distribution commencing within such period (the period which contains the annuity starting dates). For example, if the stability period is a plan year, the lookback month immediately preceding this plan year will determine the applicable interest rate used to calculate all single sum distributions for all participants within that plan year.

The stability period can be:

- 1 calendar month; or
- 1 calendar quarter; or
- 1 plan quarter; or
- 1 plan year; or
- 1 calendar year.

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**Example  
illustrating  
lookback  
month**

The stability period is the calendar year. In 1998, there were 40 single sum distributions throughout the year. The lookback month chosen by the employer was the third calendar month immediately preceding the 1998 calendar year. Thus, the interest rate that is used to calculate the lump sums for all 1998 distributions would be the 30 year Treasury Security Rate for October, 1997.

The lookback month and stability period must be set forth in the plan, however the plan does not need to "define" each term. For example, the plan need not say, "the stability period is..... and the lookback month is.....", but rather can say "... the GATT interest rate shall mean the annual rate of interest on 30-year Treasury securities for the **month prior to the first day of the Plan Year that includes the date of distribution**". (So in this example the stability period is the plan year; the lookback month is 1 month *immediately prior to the stability period*, so if the plan year was on a calendar basis, it would be December, and so the rate for December of the prior year, would be used ).

**Note- the applicable interest rate for 415(b) purposes must be the same as is used for 417(e)(3) purposes.**

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## Whether a lump sum satisfies section 415(b)

**Determining whether the 417(e)(3) lump sum equivalent satisfies 415(b)**

First step - convert the lump sum equivalent at the age of distribution (or annuity starting date) to the equivalent annual benefit. Determine the annuity purchase rate "factor" using the applicable interest rate and applicable mortality table for **the participant's age in the year of the distribution**. Then, divide the lump sum equivalent by this factor:

NOTE- THIS IS AN EXAM ISSUE, OR FOR 5310S – HERE FOR REFERENCE

$$\frac{\text{Lump sum equivalent}}{\text{Annuity factor determined using applicable mortality table and interest rate}}$$

If the plan uses different assumptions in the plan definition of actuarial equivalence, determine the annuity factor by using the plan's interest rate and the plan's mortality table. Divide the lump sum equivalent by this factor:

$$\frac{\text{Lump sum equivalent}}{\text{Annuity factor determined using plan's mortality table and interest rate}}$$

The equivalent annual benefit to test under the 415(b) dollar limit at the age of distribution will be the greater of the two results above.

**Step--415(b) dollar limit reduced to age 62**

When testing the 415(b) dollar limit, you need to determine the 415(b) dollar limit at the age of distribution if such age is not the participant's social security retirement age.

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**Whether a lump sum satisfies section 415(b), Continued**

**Example—  
reducing the  
415(b) dollar  
limit—from age  
65 to age 62**

NOTE- THIS  
IS AN EXAM  
ISSUE, OR  
FOR 5310S –  
HERE FOR  
REFERENCE

Assuming the participant is age 60 at the annuity starting date, *and assuming that the participant's social security retirement age is 65*, the 415(b) dollar limit is adjusted to age 62 using the following method as described in Notice 87-21 as follows:

Assuming the limitation year is 1999, the 415(b)(1)(A) dollar limit is \$130,000 at social security retirement age. If the participant's social security retirement age is 65, the reduction would be the two step process as described above:

- The first reduction is from age 65 to age 62, which is 5/9 of 1% for 36 months, which is a 20% reduction. Thus, the 415(b)(1)(A) dollar limit is:

$\$130,000 \times .8$ , which is \$104,000 (the reduction is 20% of \$130,000 or \$26,000).

- The next step is to calculate the 415(b) dollar limit at age 60, using \$104,000 (the dollar limit adjusted from age 65 to age 62)

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## Whether a lump sum satisfies section 415(b), Continued

### Calculating the 415(b) dollar limit from age 62 to age 60

NOTE- THIS IS AN EXAM ISSUE, OR FOR 5310S – HERE FOR REFERENCE

Assume the plan in 1999 has elected to use the GATT assumptions. Also assume that the plan provides for alternative assumptions to calculate the 415(b) limits.

The 415(b) limitation applicable at an age prior to age 62 is the **lesser of the equivalent annual benefit calculated** using the plan assumptions and the GATT assumptions.

The plan's assumptions are the UP 84 mortality table with an interest rate of 6%. The GATT assumptions are the applicable mortality table and the applicable interest rate. Assume the applicable interest rate is 8% as of the lookback month.

The adjustment from age 62 to age 60 is as follows:

Thus, the 415(b) limit at age 60 is calculated using the plan's assumptions as follows:

$$\frac{\$104,000 \times \text{plan's assumptions at age 62}}{\$104,000 \times \text{plan's assumptions at age 60}}$$

or \$86,143

The 415(b) limit at age 60 is calculated using the GATT assumptions as follows:

$$\frac{\$104,000 \times \text{GATT assumptions at age 62}}{\$104,000 \times \text{GATT assumptions at age 60}}$$

or \$94,078

The 415(b) limit is the lesser of \$86,143 and \$94,078, which is \$86,143. Note if the participant's calculated equivalent annual benefit at age 60 exceeds \$86,143, then the IRC415(b) limit has been exceeded, violating IRC401(a)(16) and 501(a).

## Final implementation of the GATT 415 changes

### Review of transition rules- plan in existence on 12-7-94 has choice whether or not to implement GATT immediately

As covered above, GATT (as amended by SBJPA for 415 purposes) changed the assumptions that plans are to use with respect to 415(b) and 417(e). These changes must be specified by the plan.

For 415 purposes, if the plan was in existence at the time that GATT was enacted (12-7-94), such a plan had a choice as to when to implement the GATT assumptions as amended by SBJPA :

- The first choice is to apply the new requirements to **all benefits** under the plan as of the GATT effective date.

Thus, a plan can provide that the effective date include benefits that accrued after 12-7-1994, which is the first day of the first limitation year beginning in 1995,. This plan would have chosen **not** to make the change effective as of a later date.

### **This choice automatically applies to a plan that incorporates 415 by reference.**

- The second choice is to have the GATT/SBJPA 415(b) assumptions become effective as of a later date and thereby protect some portion of a participant's benefit that accrued on or before a date that is earlier than first day of the limitation year beginning after 12/31/99. Remember, this can only be done if the plan was in effect on 12/7/94.

GATT If the employer can and does elect to have the new 415 requirements become effective as of a later date, the old assumptions (those that would be used under plan terms as in effect immediately prior to GATT) produce the "old law benefit " as of the "freeze date" under Rev. Rul. 98-1.

### For plans not in existence on 12-7-94

For plans **not in existence on 12-7-94** (plans first effective after that date), the GATT assumptions have to apply for plan limitation years beginning after 12/31/94 (i.e. for the 1995 limitation year).

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## Final implementation of the GATT 415 changes, Continued

### How long a plan could delay the implementation of GATT

For plans **in existence on 12-7-94**, the plan can delay the changes in assumptions required by GATT until the **earlier of**:

- Later of adoption or effective date of the amendment, or
- In all cases, the limitation years beginning after 12/31/99 (the 2000 limitation year).

Thus, the plan can be amended for the GATT assumptions prior to the 2000 limitation year. However, the GATT assumptions **must apply** by the first day of the 2000 limitation year.

If there is a delay, this is commonly referred to as “Option 2”.

### Describing the GATT implementation delay, as well as the requirements of the plan amendment

As stated above, the employer may amend the plan to provide that the GATT assumptions will not be made effective for benefits accrued by a participant until the date specified in the plan amendment (commonly referred to as “Option 2”). GATT Therefore, for the benefits accrued as of this date, the old law assumptions would apply (the assumptions that would have been used under plan terms that were in effect prior to the changes made by GATT). This date is referred to in Rev. Rul. 98-1 as the participant’s “freeze date”.

Employers who wish to utilize this option **must make specific plan amendments that include the following 4 requirements**:

### First requirement—“old law benefits”

Old Law Benefits (see Q&A 13 of R. R. 98-1)—which is the accrued benefit to which the GATT changes will not apply.

**The plan must specifically define this term.**

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## Final implementation of the GATT 415 changes, Continued

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**Second  
requirement—  
“Freeze date”**

Freeze date (Q&A -13, Q&A -22)- is the date as of which the old law benefit is determined.

**The plan must state that the 415(b)(2)(E) changes will be applied to benefits accruing after such freeze date, but not to benefits accruing on or before such date.**

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**Third  
requirement —  
“final  
implementation  
date”**

Final Implementation Date (Q&A -12) is the date as of which the section 415(b)(2)(E) GATT changes are fully applicable to all new benefit accruals for all participants under the plan.

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**Fourth  
requirement —  
specify method  
of applying  
415(b)  
limitation**

Method for applying the section 415(b) Limitation (Q&A-14) – the method by which section 415(b) is applied to a participant’s total plan benefit.

There are 3 methods: "sum-of", "wear-away" or "extended wear-away".

Plan amendments must be specific as to the method that will be used for any participant; the plan cannot simply reference one of the methods in the revenue ruling. Different freeze dates may be used for different participants, but this would be a benefit, right or feature (BRF - Demo 3) under Treas. Reg. 1.401(a)(4)-4.

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## Review of 415(b) and changes

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**Section 415(b)  
Limitations-  
summary of  
law**

The annual benefit under 415(b)(1) must be the lesser of

(A) \$90,00 (as indexed) (*\$160,000 for Limitation Years ending after 12-31-2001*), or

(B) 100% of average compensation for high 3 years

415(b)(2) –definition of Annual Benefit:

(A) Annual benefit under **415(b)**(1) means a benefit payable annually in the form of a straight life annuity

(B) if the Benefit is a form other than a Straight Life Annuity, then it must be adjusted to a Straight Life Annuity equivalent

(C) Required Adjustment if benefit paid before SSRA

(D) Required adjustment if benefit paid after SSRA

(E) Required assumptions to be used to make adjustments under subparagraphs (B), (C), and (D) above.

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**PRE-GATT  
415(b)(2)(E)**

Prior to GATT, Section 415(b)(2)(E) is as follows:

- i) For purposes of adjusting any benefit or limitation under subparagraph (B) or (C), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan;
- ii) For purposes of adjusting any limitation under subparagraph (D), the interest rate assumption shall not be greater than the lesser of 5 percent or the rate specified in the plan
- iii) For purposes of this subsection, no adjustments under subsection (d)(1) shall be taken into account before the year for which such adjustment first takes effect.

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## Review of 415(b) and changes, Continued

**415(b)(2)(E) –** Under GATT, 415(b)(2)(E) is as follows:  
**GATT**

- i) Except as provided in clause (ii), for purposes of adjusting any benefit or limitation under subparagraph (B) or (C), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan;
- ii) For purposes of adjusting the benefit or limitation of any form of benefit subject to section 417(e)(3), the applicable interest rate (as defined in section 417(e)(3)) shall be substituted for “5 percent” in clause (i), and
- iii) For purposes of adjusting any limitation under subparagraph (D), the interest rate assumption shall not be greater than the lesser of 5 percent or the rate specified in the plan
- iv) For purposes of this subsection, no adjustments under subsection (d)(1) shall be taken into account before the year for which such adjustment first takes effect.
- v) For purposes of adjusting any benefit or limitation under subparagraph (B), (C) or (D), the mortality table used shall be the table prescribed by the secretary. Such table shall be based on the prevailing commissioner’s standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date the adjustment is being made (without regard to any other subparagraph of section 807(d)(5)).

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## Review of 415(b) and changes, Continued

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**So what  
changed-  
415(b)(2)(E)  
under SBJPA**

Under SBJPA, Section 415(b)(2)(E) is as follows:

- (i) For purposes of adjusting any limitation under subparagraph (C) and, except as provided in clause (ii), for purposes of adjusting any benefit under subparagraph (B), the interest rate assumption shall not be less than the greater of 5 percent or the rate specified in the plan;
  - (ii) For purposes of adjusting any benefit under subparagraph (B) for any form of benefit subject to section 417(e)(3), the applicable interest rate (as defined in section 417(e)(3)) shall be substituted for "5 percent" in clause (i), and
  - (iii) For purposes of adjusting any limitation under subparagraph (D), the interest rate assumption shall not be greater than the lesser of 5 percent or the rate specified in the plan
  - (iv) For purposes of this subsection, no adjustments under subsection (d)(1) shall be taken into account before the year for which such adjustment first takes effect.
  - (v) For purposes of adjusting any benefit or limitation under subparagraph (B), (C), or (D), the mortality table used shall be the table prescribed by the secretary. Such table shall be based on the prevailing commissioner's standard table (described in section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date the adjustment is being made (without regard to any other subparagraph of section 807(d)(5)).
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## Summary of plan language requirements-chart 1A, incorporation by reference

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**Plan language  
415(b)**

If this is a new plan, an existing plan (in existence on or before 12/7/94), or a terminating plan that incorporates IRC section 415 by reference, then the following definitions and effective dates are required (1/1/95 or 1<sup>st</sup> limitation year beginning after 12/31/94).

- Applicable interest rate— 30 year treasury
- Applicable mortality table—(Rev Rul 95-6, 83 GAM-unisex for Annuity Starting Dates prior to 12-31-2002.
- Stability period – period for which the applicable interest rate remains constant
- Look back month – can't be any longer than the 5<sup>th</sup> month preceding the 1<sup>st</sup> day of the stability period

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**“footnotes” to  
Chart 1A**

1. If you have a new plan there are no “old law benefits” to protect.
  2. The 83-GAM-unisex table is acceptable. However, the preferable was to cite the mortality is “the table specified in Rev. Rul 95-6”. \*For annuity starting dates beginning on 12/31/2002, the “applicable Mortality Table” is found in Rev. Rul. 2011-62, the 1994 GAR table projected to 2002, using 50% unloaded male and 50% unloaded female mortality rates.
  3. Although not a change under 415(b)(2)(E), since the plan incorporates 415 by reference, the plan must specify which alternative under the definition of compensation (in 415(c)(3)) it will be using. Regs. Section 1.415-2(d)(2) and Notice 87-21.
-



## Summary of plan language requirements, amendment to plan for plan years beginning after 12-31-94 (no delay)

### Plan Language GUST amendments

1. Plan must be amended for the GATT changes to 415(b)(2)(E) effective for the limitation year beginning after 12-31-94. However, if the plan was not in existence until after 12-7-94 then the provisions will be applicable for plan and limitation years beginning after 12-31-1994.
2. The date stated above should be defined as the RPA '94 effective date and state that the changes apply to ALL benefits.
3. The amendment should state that
  - the interest assumptions for **age** and **form** adjustments
  - and the applicable mortality table "AMT"
 should be used for all. benefits

### Adjustments before social security retirement age

Age adjusted limitation where benefits commence before SSRA is equal to the **lesser** of:

- (1) equivalent **Limitation** using 5% and 83 GAM (unisex), *or*
- (2) equivalent **Limitation** using plan's interest rate and the plan mortality table used for early retirement benefits

### Adjustments after social security retirement age

Adjustments after SSRA is equal to the **lesser** of:

- (1) equivalent **Limitation** using 5% and 83 GAM (unisex), *or*
- (2) equivalent **Limitation** using plan's interest rate and the plan mortality table used for early retirement benefits

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## Summary of plan language requirements, amendment to plan for plan years beginning after 12-31-94 (no delay), Continued

### Form adjustments subject to 417(e)(3)

Form adjustments subject to 417(e)(3) (i.e. Lump sum) is the **greater** of:

- (1) equivalent **Benefit** using 30 year treasury rate and 83 GAM (unisex), *or*
- (2) equivalent **Benefit** using plan's interest rate and the plan's mortality table

### Form adjustments not subject to section 417(e)(3)

Form adjustments NOT subject to 417(e)(3) (i.e. non decreasing Annuity) is equal to the **greater** of:

- (1) equivalent **Benefit** using 5% and 83 GAM (unisex), *or*
- (2) equivalent **Benefit** using plan's interest rate and the plan's mortality table

### Definitions

Definitions:

- “AMT” is the applicable mortality table, Revenue Ruling 95-6, 83 GAM (unisex) for annuity starting dates prior to 12/31/02.

Rev. Ruling 2001-62, 1994 GAR table projected to 2002, 50% unloaded male and 50% unloaded female, for annuity starting dates on and after 12/31/2002.

- The applicable interest rate (“AIR”) is the 30 year treasury rates
- Look back month – can't be any longer than the 5<sup>th</sup> month preceding the 1<sup>st</sup> day of the stability period.
- Stability period – period for which the applicable interest rate remains constant

## Option 2, Application of GUST Assumptions delayed

**Plan Language 415(b)** The following must be defined and/or specified:

- The plan must define the old law benefit as of a specified date, which is the last date that the changes to 415(b)(2)(E) are not applicable (the “Freeze Date”)
- Must specify the freeze date – any date before the final implementation date
- Must define and specify the final implementation date, which is the date 415(b)(2)(E) changes are fully applicable to all new benefit accruals for all participants, which is the earlier of:
  1. The later of the date the amendment was adopted or made effective;  
*OR*
  2. The 1<sup>st</sup> day of the 1<sup>st</sup> limitation yr. beginning after 12-31-99
- Must specify and define which method will be used to calculate the 415(b) limit and the benefits as limited  
See question and answer 14 of Revenue Ruling 98-1
  - 1) Sum of – old law plus new law benefits
  - 2) Wear away – at least as equal to old law benefit
  - 3) Extended wear away – greater of 1 or 2

If different Freeze Dates are used for the participants then you must consider if the separate benefits, rights, and features are satisfied. I.T. Regs. Section 1.401(a)(4)-4. This would require a Demo 3 if they want a ruling.

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## Section 417(e)(3) amendments-Chart 3

### Plan language, 417(e)(3), amending for applicable interest and mortality

1. The plan must be amended to provide that the “applicable mortality table” will be used for purposes of section 417(e). This table is the 83 GAM unisex/blended. IRC 417(e)(3)(A). Rev. Rul. 95-6. (For annuity starting dates beginning on 12/31/02, it would be the 1994 GAR table. Rev. Rul. 2001-62.)
2. The plan must be amended to provide for the “applicable interest rate”. This is the 30 year Treasury Rate. **The stability period and lookback month must be part of the applicable interest rate definition.** IRC 417(e)(3)(A) and 1.417(e)-1(d) of the Regs.

### Determining the applicable interest rate

The date for determining the applicable interest rate is described in 1.417(e)-1(d)(4) of the Regs. Two important concepts:

- a) the “stability period”, which is the time period over which the same interest rate is used for all participants and,
- b) the “lookback month”, which is the month the plan looks to determine the interest rate.

The applicable interest rate for the lookback month will remain the same throughout the stability period and is changed with each stability period.

- The stability period cannot be longer than either one plan year or one calendar year. It can one calendar month, one plan quarter, one calendar quarter, one plan year or one calendar year. 1.417(e)-1(d)(4)(ii) of the Regs.
- The lookback month may be the first, second, third, fourth or fifth full calendar month preceding the first day of the stability period.

### Exception—allows interest rates to be used

Under 1.417(e)-1(d)(4)(iv) of the Regs. an exception is given that allows an average of interest rates to be used. This is the average of the 30-year Treasury rates for the two or more consecutive months from among the first, second, third, fourth and fifth calendar months preceding the stability period.

**Stability period and lookback month must be provided in the plan**

The stability period and lookback month must be set forth in the plan and must be the same for all participants. (See above cites)

**Example-**

The plan defines the stability period as the calendar quarter and the lookback month as the second month. Participant A receives a distribution on May 15. When would you calculate the interest rate?

The distribution occurs in the second calendar quarter. The first day of the quarter is April 1; two months preceding this is February. Therefore the rate to be used would be the rate in effect for February.

NOTE: 1.417(e)-1(d)(3) of the Regs. states that the applicable interest rate is determined on a monthly basis by the Commissioner. Therefore only one rate should be in effect for February.

**Effective date for 417(e)(3) amendments**

The effective date of the 417(e)(3) amendment for plans adopted and in effect before 12/8/94 can be delayed to a date after 12/31/94, generally up to the last day of the 1999 plan year. 1.417(e)-1(d)(8)(ii) of the Regs. There is no issue with regard to whether or not the PBGC rate is replaced.

Effective for PYBA 12/31/1999 the participant must receive the greater of the plan or amended amount. (See section 3.06 of Rev. Proc. 99-23.). Therefore, the application is applied differently before and after the 2000 plan year (i.e. PYBA 12/31/99).

**Chart 3, Effective date cannot be retroactive**

The Effective Date generally can not be retroactive and must be the same date as the amendment is adopted. However in some instances, the entire accrued benefit (no matter when accrued in the past) may be affected.

If the PBGC rate is replaced, then the amendment is permitted to be applied to the entire accrued benefit. However, only the PBGC rate can be replaced without an IRC 411(d)(6) issue; see P.L. 103-465, Sec. 767.

*Continued on next page*

**Section 417(e)(3) amendments-Chart 3, Continued****Chart 3,  
Required plan  
provision**

The plan must provide that the greater of the benefit using:

- the PBGC rate and plan mortality, or
- the “applicable interest rate” and the “applicable mortality table”

will be **used for the one year period following the later of:**

- the amendment’s adoption date or
- effective date.

This provision is required if

- the period used to determine the PBGC interest rate differed from the Lookback Month for the Applicable Interest Rate,
- the one month stability period was not used, or
- the Lookback Month was not the first or second calendar month immediately preceding the stability period. See I.T. Regs. 1.417(e)-1(d)(10).

Only the PBGC rate or a rate based on the PBGC rate can be replaced. Any other interest rates and mortality tables used by the plan may result in impermissible cutbacks under IRC 411(d)(6) protected benefits. I. T. 1.417(e)-1(d)(10)(ii).

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**Section 417(e)(3) amendments-Chart 3, Continued****When 417(e)(3) amendment required**

Effective for the first plan year beginning after (“PYBA”) 12/31/99 plans will be required to amend for 417(e)(3) GUST assumptions and retroactive application will be permitted.

If the amendment is adopted after the first day of the plan year beginning after 12/31/99, the plan must provide that, with respect to distributions with annuity starting dates beginning after the last day of the 1999 plan year but before the date of the adoption, the distribution will be the greater of the amount determined under the plan

- with regard to the amendment and
- without regard to the amendment.

There appears to be no issue with regard to whether or not the PBGC rate is replaced.

Effective for PYBA 12/31/99, the participant must receive the greater of the plan or the amended amount. See section 3.06 of Rev. Proc. 99-23.

Therefore, the application is applied differently before and after the 2000 plan year (ie. PYBA 12/31/99).

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**Section 417(e)(3) amendments-Chart 3, Continued****Applicable interest rate-chart 3**

The applicable interest rate for 415 and 417 purposes must be determined on the same date. Therefore the 415 amendment must either reference the applicable interest rate definition in the plan or define the applicable interest rate. Q&A 5 of Rev. Rul. 98-1

**Relief from 411(d)(6)**

Treas. Reg. 1.417(e)-1(d)(10) provides relief from IRC 411(d)(6) if the following requirements are met:

1. The amendment is replacing the PBGC rate or a rate based on this rate.
2. After the amendment is effective the present value of the benefit is not less than the amount calculated using the applicable mortality table and the applicable interest rate.
3. The time for determining the applicable interest rate satisfies one of the following:
  - The applicable interest rate used is for the first full calendar month preceding the calendar month containing the annuity starting date.
  - The applicable interest rate for the calendar month that contains the date as of which the PBGC interest rate (or rate based on the PBGC interest rate) was determined immediately before the amendment or for one of the two calendar months preceding such month.
  - For a one year period determined in accordance with Treas. Reg. 1.417(e)-1(d)(10)(ii), the applicable interest rate for either the date determining the interest rate before the amendment or the date for determining the interest rate after the amendment, whichever results in the larger distribution; or
  - The time for determining the applicable interest rate satisfies the special early transition rate rule of 1.417(e)-1(d)(10)(vi)(C) of the Regs

*Continued on next page*



## Section 417(e)(3) amendments-Chart 3, Continued

**Plan can use  
other interest  
and mortality  
assumptions**

Remember that a plan can use other interest and mortality assumptions than the applicable interest rate and applicable mortality table. But the benefit can not be less than the amount using the GATT assumptions.

Therefore you determine the applicable interest rate using the stability period and lookback month above. Then you consider the applicable interest, determined under the terms of the plan, and apply as in 1.417(e)-1(d)(10) of the Regs.

**Delay in  
implementing  
417(e)(3)**

The effective date of the 417(e)(3) amendment for plans adopted and in effect before 12/8/94 can be delayed to a date after 12/31/94, generally up to the last day of the 1999 plan year. 1.417(e)-1(d)(8)(ii) of the Regulations (Regs.).

**417(e)(3) how it  
impacts  
411(d)(6)—rate  
is replaced**

The Effective Date cannot be retroactive and must be the same date as the amendment is adopted. However, in some instances, the entire accrued benefit (no matter when accrued in the past) may be affected.

If the PBGC rate is replaced, then the amendment is permitted to be applied to the entire accrued benefit, even if such benefit is reduced. Section 1.417(e)-1(d)(10)(i). However, only the PBGC rate can be replaced, without an IRC 411(d)(6) issue, see P.L. 103-465, Sec. 767. Section 1.417(e)-1(d)(10)(iii).

If other interests and mortality tables are used with the amendment, then 411(d)(6) is applicable.

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**Section 417(e)(3) amendments-Chart 3, Continued**

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**Plan amendment changes the time when applicable interest rate is determined**

If a plan amendment changes the time for determining the applicable interest rate, (that is the lookback month or the stability period), this amendment does not violate section 411(d)(6) if a transition rule under Section 1.417(e)-1(d)(10)(ii) is applied.

Thus, the plan must provide that it will distribute the greater benefit calculated with the old or new lookback or stability period for one year after the later of the amendment's adoption or effective date.

If the amendment provides that a one month stability period will be used, and the Lookback Month is either the first or second calendar month immediately preceding the stability period, then the one year transition period is not required. (see I.T. Regs. 1.417(e)-1(d)(10)(iii), (iv), (v), and examples 1, and 4) .

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**Plans must be amended with the 417(e)(3) GATT Assumptions for the 2000 plan year**

Effective for the first plan year beginning after (PYBA) 12/31/99 plans will be required to amend for and operate in compliance with the 417(e)(3) GATT assumptions.

If the amendment is adopted after the first date of the plan year beginning after 12-31-1999, the plan must provide that, with respect to distributions with annuity starting dates beginning after the last day of the 1999 plan year (i.e. 12/31/99 for calendar year plans), the distribution will be the greater of:

- the amount determined under the plan with regard to the amendment and
  - without regard to the amendment, (See section 3.06 of Rev. Proc. 99-23.).
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## Summary of adjustments

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**Adjustments before and after SSRA to the 415(b)(1)(A) dollar limit (“age adjustments”)**

- Age adjusted limitation where benefits commence before SSRA is equal to the **Lesser** of:
  - (1) equivalent **Limitation** using 5% and 83 GAM (unisex), *or*
  - (2) equivalent **Limitation** using plan’s interest rate and the plan mortality table used for early retirement benefits
- Age adjusted limitation where benefits commence after SSRA = **Lesser** of:
  - (1) equivalent **Limitation** using 5% and 83 GAM (unisex), *or*
  - (2) equivalent **Limitation** using plan’s interest rate and the plan mortality table used for late retirement benefits

**Optional Form of benefit Adjustments (“form adjustments”)**

- Form adjustments for Optional Forms of Benefits **subject to 417(e)(3)** (i.e. Lump sum), which is equal to the **Greater** Benefit:
  1. The equivalent single life annuity annual **Benefit** calculated using 30 year treasury rate and 83GAM (unisex), or
  2. The equivalent **annual** single life annuity **Benefit** calculated using plan’s interest rate and the plan’s mortality table

**“Lesser limit”; “Bigger Benefit”**

- Form adjustments for Optional Forms of Benefit **NOT subject to 417(e)(3)** (i.e. non decreasing Annuity) is equal to the **Greater** Benefit:
  1. The equivalent single life annuity annual **Benefit** calculated using 5% and 83 GAM (unisex) or
  2. The equivalent single life annuity annual **Benefit** calculated using plan’s interest rate and the plan’s mortality table

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## **Summary of adjustments, Continued**

**Definitions**

Applicable mortality table.

- The first applicable mortality table is found in Revenue Ruling 95-6, The 83 GAM (unisex) blended 50% male and 50% female.
- Under Revenue Ruling 2001-62, it is the 1994 GAR Table projected to 2002, 50% unloaded male and 50% unloaded female mortality rates, for annuity starting dates 12-31-2002 and later.

Applicable interest rate is the 30-year treasury.

Look back month – can't be any longer than the 5<sup>th</sup> month preceding the 1<sup>st</sup> day of the stability period.

Stability period – period for which the applicable interest rate remains constant

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## Exhibit 1, 415 language

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### AMENDMENT TO DEFINED BENEFIT PLAN AND TRUST AGREEMENT

This amendment is necessary to comply with the Retirement Protection Act of 1994 (RPA'94) and is an integral part of the basic plan document. This amendment is effective for plan years & limitation years beginning on or after April 1, 1995.

#### Section 10 is hereby amended by the following:

Actuarial Assumptions: When determining the amount of a Participant's distribution or the present value of the Participant's Accrued Benefit, the Plan shall use (1) the Applicable Mortality Table, and (2) either the interest rate specified in the plan or the Applicable Interest Rate, whichever results in a greater benefit.

"Applicable Mortality Table" means the blended 1983 GAM table specified in Rev Rule 95-6.

"Applicable Interest Rate" means the annual interest rate on 30-year Treasury securities as published in the Internal Revenue Bulletin for the Lookback Month.

"Stability Period" means each Plan Year.

"Lookback Month" means the second full calendar month preceding the first day of the Stability Period.

For purposes of adjusting a benefit or limitation under Section 10, the plan will use the factors specified above.

Therefore, for purposes of applying the limitations of Section 10:

- in the case of **benefits not subject to IRC 417(e)(3)** and paid in a form other than a straight life annuity, the benefit will be adjusted to an actuarially equivalent benefit that is the greater of the equivalent annual benefit using the interest rate and mortality table specified in the plan or an interest rate of 5% and the above Applicable Mortality Table;

- in the case of benefits **subject to IRC 417(e)(3)** and paid in a form other than a straight life annuity, the benefit will be adjusted to an actuarially equivalent straight life annuity benefit that is the greater of the equivalent annual benefit using the interest rate and mortality table specified in the plan or the above Applicable Interest Rate and Applicable Mortality Table;

- in the case of benefits commencing before age 62, Section 10 is amended to clarify that the limitation computed thereunder will be the lesser of the equivalent amount computed using the interest rate and mortality table specified in the plan and the limitation computed using, 5% and the above Applicable Mortality Table (to the extent mortality is used prior to age 62);

- in the case of benefits commencing after the Social Security Retirement Age Section 10 is amended to clarify the limitation computed thereunder will be the lesser of the equivalent amount computed using the interest rate and mortality table specified in the plan and the limitation computed using 5% and the above Applicable Mortality Table.

However, the above changes will not apply to benefits accrued under the plan (including any annuity starting date or optional benefit form) as of the Freeze Date, such benefit hereinafter being referred to as the Old Law Benefit.

Freeze Date: March 31, 2000. The changes to IRC 415(b)(2)(E) will be applied to benefits accruing after the Freeze Date, but not to benefits accruing before such date.

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**Exhibit 1, 415 language, Continued**

Old Law Benefit: The benefit accrued under the terms of the plan as of the Freeze Date, using the plan rate and plan mortality in effect as of December 7, 1994. This is the benefit to which the IRC 415(b)(2)(E) changes will not be applied. In no event will the Old Law Benefit be increased after the freeze date.

Final Implementation Date: April 1, 2000. The IRC 415(b)(2)(E) changes will be applied to all benefits accruing after this date. For purposes of applying the limitations of IRC 415 to the plan benefit, the plan will apply the above limitations as amended by this article 10 to the total plan benefit, but in any event the participant will receive no less than the Old Law Benefit, limited as required under this Section 10.

In Witness Whereof, this amendment is adopted by the Employer named above, this  
day of \_\_\_\_\_, 2000, to be effective as of the date written above.

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**Exhibit 1, 415 language, Continued**

Article 5 is amended, effective as of the first Plan Year beginning after December 31, 1995 by adding a new Section 5.16 to the Plan, as described in Q&A- 1 of Revenue Ruling 98-1 to read as follows:

Section 5.16 COMPLIANCE WITH REVENUE RULING 98-1

Notwithstanding any other provision of this Article 5 to the contrary, a Participant's annual benefit and compliance with the limitations of Code Section 415 shall be determined in accordance with Revenue Ruling 98-1, and specifically Q&A-7 and Q&A 8 of Revenue Ruling 98-1.

(a) For purposes of applying the dollar limitation under Code Section 415(b) to a Plan benefit that is not payable in the form of an annual straight life annuity within the meaning of Code Section 415(b)(2)(A) and that is not subject to Code Section 417(e)(3), the determination as to whether such a Plan benefit satisfies the Code Section 415(b) limitations is made by comparing the equivalent annual benefit determined in Step 1 below with the lesser of the age-adjusted dollar limit determined in Step 2 below and the Code Section 415(b) compensation limitation described in Step 3 below:

Step 1: Under Code Section 415(b)(2)(B), determine the annual benefit in the form of a straight life annuity commencing at the same age that is actuarially equivalent to the Plan benefit. In general, Code Sections 415(b)(2)(E)(i) and (v) require that the equivalent annual benefit be the greater of the equivalent annual benefit computed using the interest rate and mortality table, or tabular factor, specified in the Plan for actuarial equivalence for the particular form of benefit payable (Plan rate and Plan mortality table, or Plan tabular factor, respectively) and the equivalent annual benefit computed using a 5 percent interest rate assumption and the applicable mortality table. This step does not apply to a benefit that is not required to be converted to a straight life annuity pursuant to Code Section 415(b)(2)(B) (for example, a qualified joint and survivor annuity).

Step 2: Under Code Sections 415(b)(2)(C) or (D), determine the Code Section 415(b) dollar limitation that applies at the age the benefit is payable (age-adjusted dollar limit). The age-adjusted dollar limit is the annual benefit that is actuarially equivalent to an annual benefit equal to the Code Section 415(b) dollar limitation payable at the Participant's Social Security Retirement Age.

If the age at which the benefit is payable is 62 or greater, and less than the Participant's Social Security Retirement Age, the age-adjusted dollar limit is determined by reducing the Code Section 415(b) dollar limitation at the Participant's Social Security Retirement Age using adjustment factors that are consistent with the factors used to reduce old age insurance benefits under the Social Security Act. Pursuant to Q&A-5 of IRS Notice 87-21, the Code Section 415(b) dollar limitation at the Participant's Social Security Retirement Age is reduced by 5/9 of 1 percent for each of the first 36 months by which benefits commence before the month in which the Participant's Social Security Retirement Age is attained and by 5/12 of 1 percent for each additional month.

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**Exhibit 1, 415 language, Continued**

If the age at which the benefit is payable is less than 62, the age-adjusted dollar limit is determined by reducing the age-adjusted dollar limit at age 62 on an actuarially equivalent basis. In general, Code Sections 415(b)(2)(E)(i) and (v) require that the reduced age-adjusted dollar limit be the lesser of the equivalent amount computed using the Plan rate and Plan mortality table (or Plan tabular factor) used for actuarial equivalence for early retirement benefits under the Plan and the amount computed using 5 percent interest and the applicable mortality table prescribed under Revenue Ruling 95-6 (used to the extent described in Q&A-6 of Revenue Ruling 98-1, which provides that for purposes of adjusting an limitation under Code Section 415(b)(2)(C) or (D) that, to the extent a forfeiture does not occur upon death, the mortality decrement may be ignored prior to age 62 and must be ignored after Social Security Retirement Age).

If the age at which the benefit is payable is greater than the Participant's Social Security Retirement Age, the age-adjusted dollar limit is determined by increasing the Code Section 415(b) dollar limitation at the Participant's Social Security Retirement Age on an actuarially equivalent basis. In general, Code Sections 415(b)(2)(E)(i) and (v) require that the increased age-adjusted dollar limit be the lesser of the equivalent amount computed using the Plan rate and the Plan mortality table (or Plan tabular factor) used for actuarial equivalence for late retirement benefits under the Plan and the equivalent amount computed using 5 percent interest and the applicable mortality table (used to the extent described in Q&A-6, as described in the prior paragraph).

Step 3: Determine the Participant's Code Section 415(b) compensation limitation. This limitation is equal to the Participant's compensation averaged over the consecutive three-year period producing the highest average, as provided in Code Section 415(b)(3).

This Plan does not satisfy the Code Section 415(b) limitations unless the equivalent annual benefit determined in Step 1 is no greater than the lesser of the age-adjusted dollar limit determined in Step 2 and the Code Section 415(b) compensation limitation determined in Step 3.

(b) For purposes of applying Code Section 415(b)(2)(B) to a benefit that is payable in a form subject to Code Section 417(e)(3), the determination of the equivalent annual benefit is the same as in Step 1 of subsection (a) above, except that, under Code Section 415(b)(2)(E)(ii), the applicable interest rate under Q&A-5 OF Revenue Ruling 98-1 (GATT interest rates) is substituted for the 5 percent interest rate under Code Section 415(b)(2)(E)(i). The lookback month under Treasury Regulations 1.417(e)-1T(d)(4) will be the third full calendar month preceding the first day of the Plan Year that includes the annuity starting date.

Thus, the equivalent benefit must be the greater of:

- (a) the equivalent amount computed using the plan rate and mortality table (or plan tabular factor) and
- (b) the equivalent amount computed using the applicable interest rate under Q&A 5 of Rev. Rul. 98-1 and the applicable mortality table (used to the extent described in Q&A 6 of Rev. Rul. 98-1 as described in Step 1).

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## **Exhibit 1, 415 language, Continued**

### **ARTICLE I**

#### **DEFINITIONS**

The following terms as used here in shall have the meanings set forth below:

1.1 "Accrued Benefit" means the amount of benefit to which a Member would have been entitled under Section 5.1 based upon his Earnings and his Credited Service at his Early Retirement Date or date of termination of employment, whichever is appropriate.

1.2 "Actuarial Equivalent" means an amount of approximately equal value computed in accordance with the following:

- (a) For lump sum distributions made prior to January 1, 2000, for the computation of a lump sum payment under Section 7.6, the 1971 TPF&C Forecast Mortality Table with ages set back two years for Members and Interest at the Pension Benefit Guaranty Corporation's interest rate or rates for computing a lump sum distribution on plan termination in effect at the time that the lump sum is computed. For those who have attained age 55 a 5 years of Credited Service, the immediate rate shall be used and for all others, the deferred rates shall be used.
- (b) For lump sum distributions made on or after January 1, 2000, the computation of lump sum payments under Section 7.6 shall be based on the mortality table prescribed by the Secretary of the Treasury for calculation of lump sum distributions, which table shall be based on the "prevailing commissioner's standard table" described in Code Section 807(d)(5)(A) (as of January 1, 1996, and until further notice from the Secretary of the Treasury, the GAM 83 mortality table). The applicable interest rate shall be that equal to the annual rate of interest on 30-year Treasury securities for the month prior to the month the lump sum distribution is computed. Notwithstanding the foregoing, for lump sum distributions made during the period beginning January 1, 2000, and ending December 1, 2000, the calculation of lump sum distributions shall be based on the interest rate and mortality table described in paragraph (a) above if it would result in a larger distribution.
- (c) For lump sum distributions made prior to January 1, 2000, for all other purposes under the Plan, the 1971 TPF&C Forecast Mortality Table with ages set back two years for Members and four years for joint and survivor annuitant and interest at the rate of 7%. For lump sum distributions made on or after January 1, 2000, for all other purposes under the Plan, the mortality table prescribed by the Secretary of the Treasury for calculation of lump sum distributions, which table shall be based on the "prevailing commissioner's standard table" described in Code Section 807(d)(5)(A) (as of January 1, 1996, and until further notice from the Secretary of the Treasury, the GAM 83 mortality table) and interest at the rate of 7%.
- (d) Notwithstanding anything to the contrary, for purposes of Paragraphs (ii) and (iii) of Section 5.7(a) interest shall be at the rate of 5%.

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**Exhibit 1, 415 language, Continued**

5.6 Payment of Retirement Income. Except as may otherwise be required by the provisions under Article V, VII, or XIV, Retirement Income payments shall be made to a retired Member or Vested Former Member in equal monthly installments commencing on the first day of the month coinciding, with or next following his Normal, Early or Deferred Retirement Date or in the case of a Vested Former Member, the date his benefits commence as provided in paragraph 5.5, and ending with the last monthly payment preceding his death.

5.7 (a) Maximum Benefit. Anything to the contrary notwithstanding, Retirement Income computed pursuant to this Plan, when expressed as an annual benefit, shall not exceed the lesser of \$90,000 (the "Dollar Limitation") or 100% of the Member's compensation (the "Compensation Limitation") subject to the following:

- (i) The maximum shall apply to the Retirement Income computed under Section 5.1 in the form of a straight life annuity or, if the Member has elected a joint and survivor annuity with his Spouse as the annuitant, in the form of a joint and survivor annuity under Section 7.1 or 7.5.
- (ii) If the Retirement Income begins prior to a Member's Social Security Retirement Age but on or after age 62, the "Dollar Limitation" applicable to such Retirement Income shall be reduced by: (A) in the case of a Member whose Social Security Retirement Age is 65, 5/9 of 1 percent for each month by which Retirement Income commences before the month in which the Member attains age 65, or (B) in the case of a Member whose Social Security Retirement Age is greater than 65, 5/9 of 1 percent for each of the first 36 months and 5/12 of 1 percent for each of the additional months (up to 24) by which Retirement Income commences before the month in which the Member attains his Social Security Retirement Age. If the Retirement Income begins before age 62, the Dollar Limitation shall be the Actuarial Equivalent of the Dollar Limitation for Retirement Income commencing at age 62, reduced for each month by which the Retirement Income commences before the month in which the Member attains age 62.
- (iii) If Retirement Income begins after a Member's Social Security Retirement Age, the maximum Dollar Limitation applicable to such Retirement Income shall be equal to the Actuarial Equivalent of the Dollar Limitation where the Dollar Limitation is deemed to be a Retirement Income commencing at the Member's Social Security Retirement Age.
- (iv) If the Member has fewer than 10 years of participation in the Plan, the Dollar Limitation shall be multiplied by a fraction, of which the numerator is his years of participation in the Plan (including fractions of a year) and the denominator is 10. If a Member has fewer than 10 years of service, the Compensation Limitation and the limit in Subparagraph (v) shall be multiplied by a fraction, of which the numerator is his years of service (including fractions of a year) and the denominator is 10. Notwithstanding the foregoing, the fractions referred to in the foregoing sentences shall in no event be less than 1/10th.

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## **Exhibit 1, 415 language, Continued**

- (v) The Plan may provide Retirement Income in excess of the Member's Compensation Limitation provided the annual benefit is not in excess of \$10,000 for the current Plan Year and all prior Plan Years and the Member never participated in a defined contribution plan of the Company.
- (vi) The Dollar Limitation shall be increased for years beginning after December 31, 1987 as permitted by regulations of the Secretary of the Treasury to reflect cost-of-living adjustments, except that no such increase shall be taken into account prior to the year for which it is effective.

## **Exhibit 2, 415-417**

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**For Plan Years Beginning Before August 1, 2001, the Following Additional Adjustments to the Section 4.01(b) Limitations on Benefits Shall Apply :**

- (B) If the benefit of a Participant commences before the Participant's Social Security Retirement Age, but on or after age 62, the "dollar limitation" (as reduced under subparagraph (A) above if necessary) shall be determined as follows:
- (1) If a Participant's Social Security Retirement Age is 65 and benefits commence on or after age 62, the "dollar limitation" shall be reduced by 5/9 of one percent for each month by which benefits commence before the month in which the Participant attains age 65.
  - (2) If a Participant's Social Security Retirement Age is greater than 65 and benefits commence on or after the Participant attains age 62, the "dollar limitation" shall be reduced by 5/9 of one percent for each of the first 36 months and 5/12 of one percent for each of the additional months (up to 24 months) by which benefits commence before the month of the Participant's Social Security Retirement Age.
- (C) If a Participant's benefit commences before the Participant attains age 62, the "dollar limitation" shall be the actuarial equivalent of the Participant's benefit beginning at age 62 (as reduced under subparagraph (A) above if necessary) reduced for each month by which the benefit commences before the month in which the Participant attains age 62. The interest rate assumption for determining actuarial equivalence is the greater of 5% or the rate set forth in Section 4.07(a) of the Plan. However, for Limitation Years beginning on or after January 1, 1995, but before August 1, 2000, for purposes of adjusting the "dollar limitation" of any form of benefit subject to Code Section 417(e)(3), "the applicable interest rate (as defined in Section 4.07(c))" shall be substituted for "5%" in the preceding sentence.
- (D) If a Participant's benefit commences after the Participant's Social Security Retirement Age, the "dollar limitation" (as reduced under subparagraph (A) above if necessary) shall be adjusted so that it is the actuarial equivalent of the Participant's benefit beginning at his Social Security Retirement Age. The interest rate assumption for determining actuarial equivalence is the lesser of 5% or the rate set forth in Section 4.07(a) of the Plan.
- (E) If a Plan benefit is distributed in any form other than a straight life annuity, the benefit shall be actuarially adjusted (using the greater of five percent (5%) or the interest rate set forth in Section 4.07(a) of the Plan) to the equivalent of a straight life annuity commencing on the date benefits otherwise begin. However, for Limitation Years beginning on or after January 1, 1995, for purposes of adjusting any benefit subject to Code Section 417(e)(3), "the applicable interest rate (as defined in Section 4.07(b))" shall be substituted for "5%" in the preceding sentence.

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**Exhibit 2, 415-417, Continued**

- (F) Notwithstanding anything in the Plan to the contrary, for Limitation Years beginning on or after January 1, 1995, for purposes of adjusting any benefit or "dollar limitation" under subparagraph (C), (D) or (E) above, the adjustment shall be based on the mortality table prescribed by the Secretary of the Treasury, which shall be based on the prevailing commissioners' standard table (described in Code Section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of Code Section 807(d)(5)).

**For Plan Years Beginning On or After August 1, 2001, the Following Additional Adjustments to the Section 4.01(b) Limitations on Benefits Shall Apply**

- (B) If a Participant's benefit commences before the Participant attains age 62, the "dollar limitation" shall be the actuarial equivalent of the Participant's benefit beginning at age 62 (as reduced under subparagraph (A) above if necessary) reduced for each month by which the benefit commences before the month in which the Participant attains age 62. The "dollar limitation" applicable at an age prior to age 62 is determined as the lesser of: (1) the actuarial equivalent (at such age) of the "dollar limitation" computed using the interest rate and mortality table specified in Section 4.07(a) of the Plan, and (2) the actuarial equivalent (at such age) of the "dollar limitation" computed using a 5% interest rate and the applicable mortality table as defined in Section 4.07(b) of the Plan. Any decrease in the "dollar limitation" determined in accordance with this subparagraph (C) shall not reflect a mortality decrement if benefits are not forfeited upon the death of the Participant. If any benefits are forfeited upon death, the full mortality decrement is taken into account.
- (C) If a Participant's benefit commences after the Participant attains age 65, the "dollar limitation" (as reduced under subparagraph (A) above if necessary) shall be adjusted so that it is the actuarial equivalent of the Participant's benefit beginning at his age 65. The actuarial equivalent of the "dollar limitation" applicable at an age after age 65 is determined as the lesser of: (1) the actuarial equivalent (at such age) of the "dollar limitation" computed using the interest rate and mortality table specified in Section 4.07(a) of the Plan, and (2) the actuarial equivalent (at such age) of the "dollar limitation" computed using a 5% interest rate assumption and the applicable mortality table as defined in Section 4.07(b) of the Plan. For these purposes, mortality between age 65 and the age at which benefits commence shall be ignored.

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**Exhibit 2, 415-417, Continued****4.07 Actuarial Equivalent Determination.**

- (a) Any benefit which, under the terms of the Plan, is the actuarial equivalent of a stated benefit shall have the same present value on the date payments commence as the stated benefit. For purposes of establishing actuarial equivalence, the commuted value of an annuity as of the date of the first payment shall be based on: (i) for Plan Years beginning before August 1, 2002, the U.P. 1984 mortality table with seven percent (7%) interest; and (ii) for Plan Years beginning on and after August 1, 2002, the mortality table prescribed in Revenue Ruling 2001-62, based on the 1994 Group Annuity Reserving Table (94 GAR) projected, using Scale AA, to 2002 with seven percent (7%) interest. The present value of the amount determined under the preceding sentence shall be determined by discounting all future payments for interest and mortality based upon: (i) for Plan Years beginning before August 1, 2002, the U.P. 1984 mortality table with seven percent (7%) interest; and (ii) for Plan Years beginning on and after August 1, 2002: the mortality table prescribed in Revenue Ruling 2001-62, based on the 1994 Group Annuity Reserving Table (94 GAR) projected, using Scale AA, to 2002 with seven percent (7%) interest.
- (b) Notwithstanding subsection (a) above and except as provided in subsection (c) below, for Plan Years beginning on or after January 1, 1995, the present value of any distribution subject to Code Section 417(e)(1) and (2) shall not be less than the value calculated by using the "applicable mortality table" and the "applicable interest rate."
- (i) "Applicable mortality table" shall mean the mortality table prescribed by the Secretary of the Treasury, which shall be based on the prevailing commissioners' standard table (described in Code Section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which present value is being determined (without regard to any other subparagraph of Code Section 807(d)(5)).

Effective for distributions with annuity starting dates on or after August 1, 2002, the "applicable mortality table" used for purposes of adjusting any benefit or limitation under sections 415(b)(2)(B), (C), or (D) of the Code as set forth in Section 4.01(b) of the Plan and the "applicable mortality table" used for purposes of satisfying the requirements of section 417(e) of the Code as set forth in this Section 4.07(b) of the Plan shall be the table prescribed in Revenue Ruling 2001-62, based on the 1994 Group Annuity Reserving Table (94 GAR) projected, using Scale AA, to 2002 with seven percent (7%) interest; provided, however, that the "applicable mortality table" described herein shall be changed to that subsequently prescribed by the Secretary of Treasury, as provided in the first paragraph of this subsection 4.07(b)(i), no later than the required date specified for any such change in revenue rulings, notices, or other guidance published in the Internal Revenue Bulletin, in accordance with Treasury Regulation 1.417(e)-1 (d)(2).

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## **Exhibit 2, 415-417, Continued**

- (ii) "Applicable interest rate" shall mean the annual rate of interest on 30-year Treasury securities as specified by the Commissioner for the "lookback month," which for purposes of this subsection (b) shall mean the fifth (5<sup>th</sup>) full calendar month preceding the first day of the Plan Year in which the Participant's Annuity Starting Date occurs. The "applicable interest rate" shall remain constant for the "stability period." For purposes of this subsection (b), "stability period" shall mean the Plan Year.
  - (iii) Notwithstanding anything to the contrary, the Accrued Benefit of any Participant as of July 31, 1995, determined using the prior actuarial equivalency interest rate and the associated mortality table, is protected under Code Section 411 (d)(6).
- (c) Notwithstanding subsections (a) and (b) above, the present value of any distribution subject to Code Section 417(e)(1) and (2) that was to be made before the Second Restated Plan was adopted on July 28, 1995, was to be calculated using the interest rate determined under the PBGC regulations used for determining the present value of a lump sum distribution on plan termination that were in effect on September 1, 1993, and using the Plan provisions in effect on July 27, 1995, but only if such provisions of the Plan met the requirements of Code Section 417(e)(3) as in effect on such date.

## Exhibit 3, 415(a) language

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### 6.3 ADJUSTMENTS TO ANNUAL BENEFIT AND LIMITATIONS

- (a) If the "annual benefit" begins before the Participant's Social Security Retirement Age, but on or after age 62, the \$90,000 limitation shall be reduced by: (1) in the case of a Participant whose Social Security Retirement Age is 65, 5/9 of one percent (1%) for each month by which benefits commence before the month in which the Participant attains age 65, or (2) in the case of a Participant whose Social Security Retirement Age is greater than 65, 5/9 of one percent (1%) for each of the first 36 months and 5/12 of one percent (1%) for each additional months (up to 24) by which benefits commence before the month in which the Participant attains his Social Security Retirement Age. If the "annual benefit" begins before age 62, the \$90,000 limitation shall be the actuarial equivalent of the Participant's limitation for benefits commencing at age 62, reduced for each month by which benefits commence before the month in which the Participant attains age 62. In order to determine actuarial equivalence for this purpose, the lesser of the equivalent amount computed using the Plan interest rate and Plan mortality table (or other tabular factor) and the amount computed using 5 percent (5%) interest and the "Applicable Mortality Table" shall be used. The mortality decrement shall be ignored to the extent that a forfeiture does not occur at death.
- (b) If the "annual benefit" begins after the Participant's Social Security Retirement Age the \$90,000 limitation shall be increased so that it is the actuarial equivalent of the \$90,000.00 limitation at the Participant's Social Security Retirement Age. In order to determine actuarial equivalence for this purpose, the lesser of the equivalent amount computed using the Plan interest rate and Plan mortality table (or other tabular factor) and the amount computed using five percent (5%) interest and the "Applicable Mortality Table" shall be used. The mortality decrement shall be ignored to the extent that a forfeiture does not occur at death.

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**Exhibit 3, 415(a) language, Continued**

- (c) For purposes of adjusting the "annual benefit" to a straight life annuity, the equivalent "annual benefit" shall be the greater of the equivalent "annual benefit" computed using the Plan interest rate and the Plan mortality table (or other tabular factor) and the equivalent "annual benefit" computed using five percent (5%) interest rate assumption and the "Applicable Mortality Table". If the "annual benefit" is paid in a form other than a non-decreasing life annuity payable for a period not less than the life of a Participant or, in the case of a Pre-Retirement Survivor Annuity, the life of the surviving spouse, the "Applicable Interest Rate" shall be substituted for five percent (5%) in the preceding sentence.
- (d) For purposes of Sections 6.1, 6.3(a) and 6.3(b), no adjustments under Code Section 415(d) shall be taken into account before the 11 limitation year " f or which such adjustment first takes effect.
- (e) For purposes of Section 6.1, no adjustment is required for qualified joint and survivor annuity benefits, and pre-retirement death benefits.

## **Exhibit 4, 415 language**

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### **ARTICLE I - DEFINITIONS**

1. "Accrued Benefit" means the retirement benefit .....

1.2 "Act" or "ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

1.3 "Actuarial Equivalent" means a form of benefit differing in time, or manner of payment from a specific benefit provided under the Plan but having the same value when computed using Pre-Retirement Table: GAM 70 mortality table; Post-Retirement Table: GAM 70 mortality table and Pre-Retirement Interest: 8.5%; Post-Retirement Interest: 8.5% .

Notwithstanding the foregoing:

- a) Effective for plan Years beginning prior to January 1,2000, the interest rate for the purposes of determining an Actuarial Equivalent amount (other than non-decreasing life annuities payable for a period not less than the life of a participant or, in the case of a Pre-Retirement Survivor Annuity, the life of the surviving spouse) shall be the interest rates specified above or the "Section 417 interest rates", whichever produces the greater benefit, where the "Section 417 interest rates" are: 120% of the "applicable interest rate" if the present value under paragraph (a) exceeds \$25,000. In no event shall the present value under this paragraph (b) be less than \$25,000.
- (b) Effective for Plan Years beginning after December 31, 1999, when determining the present value of a Participant's Accrued Benefit, such determination shall be based on: (i) the "Applicable Interest Rate" (as hereinafter defined) and (ii) the prevailing commissioners' standard table (described in Code Section 807(d)(5)(A)) used to determine reserves for group annuity contracts issued on the date as of which the present value of the Participant's Accrued Benefit is being determined (without regard to any other subparagraph of Code Section 807(d)(5) that is prescribed by the Commissioner of Internal Revenue in revenue rulings, notices or other guidance published in the Internal Revenue Bulletin).

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**Exhibit 4, 415 language, Continued**

The "applicable interest rate" set forth in Section 1.3(a)(1) shall mean the interest rate which would be used, determined as of the first day of the Plan Year in which a distribution occurs, by the Pension Benefit Guaranty Corporation for the purpose of determining the present value of a lump-sum distribution on plan termination. The "Applicable Interest Rate" for purposes of Section 1.3(b) is the rate of interest on 30-year Treasury securities specified by the Commissioner of Internal Revenue for the look-back month for the stability period. The look-back month applicable to the stability period is the first calendar month preceding the first day of the stability period. The stability period is the successive period of one Plan Year that contains the annuity starting date for the distribution and for which the Applicable Interest Rate remains constant. If a Plan amendment (including this amendment and restatement) changes the time for determining the "Section 417 interest rate" set forth in Section 1.3(a) or the present value of a Participant's Accrued Benefit set forth in Section 1.3(b), and the amendment is effective on or after the adoption date, any distribution in the one-year period commencing at the time the Plan amendment is effective must use the rate determined under the Plan, either before or after the amendment, that results in the larger Accrued Benefit. If the Plan amendment (including this amendment and restatement) is effective prior to the adoption date, the Plan must use the rate resulting in the larger Accrued Benefit for the period beginning with the effective date and ending one-year after the adoption date.

**6.3 ADJUSTMENTS TO ANNUAL BENEFIT AND LIMITATIONS**

- (a) If the "annual benefit" begins before the Participant's Social Security Retirement Age, but on or after age 62, the \$90,000 limitation shall be reduced by: (1) in the case of a participant whose Social Security Retirement Age is 65, 5/9 of 1% for each month by which benefits commence before the month in which the Participant attains age 65, or (2) in the case of a Participant whose Social Security Retirement Age is greater than 65, 5/9 of 1% for each of the first 36 months and 5/12 of 1% for each additional month (up to 24) by which benefits commence before the month in which the participant attains his Social Security Retirement Age. If the "annual benefit" begins before age 62, the \$90,000 limitation shall be the actuarial equivalent of the Participant's limitation for benefits commencing at age 62, reduced for each month by which benefits commence before the month in which the Participant attains age 62. In order to determine actuarial equivalence for this purpose, the interest rate assumption is the greater of five percent (5%) or the rate specified in Section 1.3.

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**Exhibit 4, 415 language, Continued**

- (b) Notwithstanding Section 6.3(a) above, for "limitation years" beginning prior to January 1, 1987, the \$90,000 limit shall not be reduced if the annual benefit begins on or after age 62. If the "annual benefit" begins before age 62, the \$90,000 limitation shall be reduced so that it is the actuarial equivalent of the \$90,000 limitation beginning at age 62. However, the \$90,000 limitation shall not be actuarially reduced to less than: (1) \$75,000, if the "annual benefit" commences on or after age 55, or (2) the amount which is the actuarial equivalent of the \$75,000 limitation at age 55 if the "annual benefit" commences prior to age 55. For purposes of adjusting the \$90,000 limitation applicable prior to age 62 or the \$75,000 limitation applicable prior to age 55, the adjustment shall be made pursuant to Section 1.3 except that the interest rate assumption shall be the greater of five percent (5%) or the rate specified in Section 1.3 and the mortality decrement shall be ignored to the extent that a forfeiture does not occur at death.
- (c) If the "annual benefit" begins after the Participant's Social Security Retirement Age (or for Plan Years beginning prior to January 1, 1987, age 65) the \$90,000 limitation shall be increased so that it is the actuarial equivalent of the \$90,000 limitation at the Participant's Social Security Retirement Age (or for Plan Years beginning prior to January 1, 1987, age 65).
- (d) For purposes of adjusting the "annual benefit" to a straight life annuity, the adjustment shall be made pursuant to Section 1.3 except that the interest rate assumption shall be the greater of five percent (5%) or the rate specified in section 1.3.
- (e) For purposes of adjusting the \$90,000 limitation applicable after the Participant's Social Security Retirement Age (or for Plan Years beginning prior to January 1, 1987, age 65) the adjustment shall be made pursuant to Section 1.3 except that the interest rate assumption shall be the lesser of five percent (5%) or the rate specified in Section 1.3 and the mortality decrement shall be ignored to the extent that a forfeiture does not occur at death.
- (f) For purposes of Sections 6.1, 6.3(a) and 6.3(b), no adjustments under Code Section 415(d) shall be taken into account before the "limitation year" for which such adjustment first takes effect.

**6.7 INCORPORATION BY REFERENCE**

Notwithstanding anything contained in this Article to the contrary, the limitations, adjustments and other requirements prescribed in this Article shall at all times comply with the provisions of Code Section 415 and Regulations thereunder, the terms of which are specifically incorporated herein by reference.

## Exhibit 5, 417(e)

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### AMENDMENT TO THE RETIREMENT PLAN

....hereby make the following amendments to the XYZ Corp. Retirement Plan on this \_\_\_\_\_ to be effective as of the first day of November, 1995.

That, regardless of anything in the plan to the contrary, effective \_\_\_\_\_ 1995 the following provisions shall become effective:

1. That, for purposes of adjusting plan benefits subject to Section 417(e)(3) of the Code, the applicable interest rate defined in Section 417(e)(3) as amended by GATT shall be substituted for 5%. For purposes of this section, the applicable interest rate shall be substituted for 5%. For purposes of this section, the applicable interest rate shall be calculated as of the first full calendar month ("lookback month") preceding the first day of the "stability period" in which distribution will be made. The interest rate shall remain constant during the stability period, which shall be the plan year. The Company reserves the right to adopt the model language prepared by the Internal Revenue Service with regards to GATT when such language is issued. Furthermore, for purposes of this section, the applicable Mortality Table shall be the 1983 Group Annuity Mortality Table (83GAM 50/50), as required by Revenue Ruling 95-6. Such applicable Mortality Table shall remain in effect until such time as a different table is prescribed by the Secretary.
2. That all cost of living adjustments and Section 415 Interest and Mortality assumptions are incorporated by reference in the existing plan document, and, accordingly, are not required to be formally amended at this time.
3. That Section 6.7 of the Plan is hereby amended by deleting the definition of "The Section 417 interest rates" and "the applicable interest rates," and replacing them with the following:
  - a. The Section 417 interest rate shall equal the "Applicable Interest Rate."
  - b. "Applicable Interest Rate" shall mean the annual rate of interest an thirty (30) year Treasury Securities for the first full calendar month (lookback month) preceding the first day of the "stability period" in which the distribution is made. The interest rate shall remain constant during the "stability period" which shall be the plan year. When applying the Applicable Interest Rate, the mortality table shall be the applicable mortality table published by the Commissioner of the Internal Revenue Service (which is currently the 1983 Group Annuity Mortality Table), as specified in the RETIREMENT PROTECTION ACT provisions of the URUGUAY ROUND AGREEMENTS ACT which augmented the GENERAL AGREEMENT ON TARIFFS AND TRADE ("GATT"). The Company reserves the right to adopt the model language prepared by the Internal Revenue Service for lump sum distributions under GATT when such language is issued.

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## **Exhibit 5, 417(e), Continued**

C. In no event shall the present value of any benefit determined under this Plan be less than the greater of:

- (i) The present value of any optional benefit form determined as the Actuarial Equivalent of the normal form of benefit under the Plan; or
- (ii) The present value of such benefits determined using the Applicable Interest Rate; or
- (iii) The present value of such benefits or annuities determined using the Actuarial Equivalencies as specified in the Adoption Agreement.

## **Exhibit 6, section 417**

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### Article II Definitions.

Wherever the following terms are used in the Plan, they shall have the meanings set forth below, unless the context clearly requires a different meaning:

2.1. "Accrued Benefit" means, with respect to any Participant at any time, the monthly benefit computed under Section 5. 1, based on his Average Final Compensation and Covered Compensation as of the time such Accrued Benefit is computed. Notwithstanding the foregoing, "Accrued Benefit" for an Employee who retires or remains in service after his Social Security Retirement Age is determined as stated in the foregoing sentence, except that Covered Compensation shall be determined as of the Participant's Social Security Retirement Age.

2.2. "Actuarial Eguivalent" means a benefit, as determined by the Actuary, whose value equals the value of a benefit or benefits otherwise payable in a different form or at a different time under the Plan, based on an annual interest assumption of six percent (6%) and the 1971 Group Annuity Mortality Table for Males, with a two (2) year age set back for Participants and a four (4) year age set back for contingent annuitants; provided, however, that the interest rates for purposes of Sections 5.4, 7.4 and 7.5 shall be as follows:

(a) for purposes of paragraphs (d) and (h) of Section 5.4, the interest rate shall be the greater of the rate in Section 2.2 above or five (5) percent and for purposes of paragraph (f) the interest rate shall not exceed five (5) percent; and

(b) effective January 1, 1989, for purposes of determining the amount of a lump sum payment under Sections 7.4 and 7.5, the interest rate used shall be the rate used by the Pension Benefit Guaranty Corporation (in effect on the date of distribution) in determining the present value of an immediate or deferred annuity for such a benefit upon plan termination and the PBGC Mortality Table for Males, with a two (2) year age set back for Participants and a three (3) year age set back for contingent annuitants. However, effective July 1, 1995, the interest rate used to determine the lump sum equivalent of a benefit shall be the GATT interest rate and the applicable mortality table. For this purpose, the GATT interest rate shall mean the annual rate of interest on 30-year Treasury securities for the month prior to the first day of each Plan Year before the date of distribution or such other time as the Secretary of the Treasury may by regulations prescribe, and the applicable mortality table shall mean the 1983 GAM table with fixed blend of 50% male and 50% female rates or such other table prescribed by the Secretary of the Treasury. In no event, however, will the value of any accrued benefit be less than the value of the benefit accrued on September 30, 1989, determined in accordance with the Plan in effect on such date.